

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (Phentermine/ Fenfluramine/Dexfenfluramine) PRODUCTS LIABILITY LITIGATION	:	MDL DOCKET NO. 1203
THIS DOCUMENT RELATES TO:	:	
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BARBARA L. JACOBS	:	
v.	:	CIVIL ACTION NO. 04-20576
WYETH, et al.	:	
VITINA D. PARKER	:	
v.	:	CIVIL ACTION NO. 04-20412
WYETH, et al.	:	
ELAINE RICHBOURG	:	
v.	:	CIVIL ACTION NO. 04-20410
WYETH, et al.	:	
JACQUELINE A. ROBERTS	:	
v.	:	CIVIL ACTION NO. 04-20574
WYETH, et al.	:	

MEMORANDUM AND PRETRIAL ORDER NO.

Bartle, J. November , 2004

Before the court are the motions of plaintiffs in the four above-captioned actions to remand to the Circuit Court of Escambia County, Florida.

I.

Plaintiffs, citizens of Florida, have sued Wyeth, the manufacturer of Pondimin and Redux, a related company, Wyeth Pharmaceuticals, as well as Wyeth's current and former sales representatives Richard Coe ("Coe") and Debra Berry ("Berry").¹

1. Each of the four plaintiffs has brought claims against current Wyeth sales representative Richard Coe, and all plaintiffs except Vitina Parker have also sued former Wyeth sales representative Debra Berry.

Wyeth and its related company are of diverse citizenship, while the sales representatives are not. Plaintiffs assert claims for negligence, strict liability (defective design and failure to warn), fraudulent misrepresentation, fraudulent concealment, and civil conspiracy. No federal claim for relief is alleged. The pending motion is before the undersigned as the transferee judge in Multi-District Litigation ("MDL") 1203, the mass tort litigation involving Pondimin and/or Redux.

Plaintiffs have exercised their right of intermediate or back-end opt-out under the Nationwide Class Action Settlement Agreement ("Settlement Agreement") in Brown v. American Home Products Corporation, CIV.A. No. 99-20593 (E.D. Pa. Aug. 28, 2000) (Pretrial Order ("PTO") No. 1415), which encompassed persons who ingested Wyeth's diet drugs Pondimin and Redux. See e.g., Settlement Agreement at § IV.(A), (B), and (D)(4). Under the Settlement Agreement, those who have exercised an intermediate or back-end opt-out may sue Wyeth for compensatory damages in the tort system rather than obtain benefits from the AHP Settlement Trust.

Plaintiffs originally filed their complaints in the Circuit Court of Escambia County, Florida on November 25, 2003, over six years after the diet drugs were withdrawn from the market in September, 1997. On December 24, 2003, Wyeth timely removed these cases to the United States District Court for the Northern District of Florida, asserting that plaintiffs fraudulently joined defendants Coe and Berry. Thereafter,

plaintiffs moved to remand this action under 28 U.S.C. § 1447(c). The Florida federal court deferred ruling on plaintiffs' motions, and the cases were then transferred to this court as part of MDL 1203.

Wyeth contends that remand is inappropriate because the non-diverse sales representatives are fraudulently joined. This court addressed similar issues in Memorandum and PTO No. 3856 in Bankston, et al. v. Wyeth, et al., CIV.A. No. 03-20765 (E.D. Pa. Aug. 12, 2004), which is also part of the nationwide diet drug litigation. In Bankston, we laid out in detail the standards for removal based on diversity jurisdiction and fraudulent joinder. See id. Because we examined the same legal issues as they applied to nearly identical facts in Bankston, we need not revisit them here.

As in Bankston, plaintiffs argue that complete diversity does not exist as required by 28 U.S.C. § 1332. Similarly, plaintiffs here deny Wyeth's allegations of fraudulent joinder of the sales representatives, the non-diverse defendants. For the same reasons set forth in Bankston, we find that plaintiffs have fraudulently joined Berry and Coe in an effort to defeat federal diversity jurisdiction.

We will deny plaintiffs' motions to remand these actions to the Circuit Court of Escambia County, Florida and will dismiss the complaints as to defendants Berry and Coe.

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PRETRIAL ORDER NO.

AND NOW, this day of November, 2004, for the
reasons set forth in the accompanying Memorandum, it is hereby
ORDERED that:

(1) the motions of plaintiffs to remand are DENIED;
and

(2) all defendants in the above-captioned actions
except Wyeth and Wyeth Pharmaceuticals are DISMISSED.

BY THE COURT:

J.